

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FIRST DAY HEARINGS (VIA ZOOM)

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

12 APPEARANCES: SEE NEXT PAGE

15 (Recorded via CourtSpeak; No log notes)

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32
33 (Please also see Electronic Appearances.)

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1 HOUSTON, TEXAS; TUESDAY, MARCH 16, 2021; 11:00 A.M.

2 THE COURT: All right, good morning. We are here
3 on first day hearings in the Griddy Energy case. It's
4 21-30923. We have done electronic appearances.

5 If I could get counsel for the Debtor to go ahead
6 and press five star one time on your line, we will begin
7 with an opening statement by Debtor's counsel.

8 (No audible response.)

9 THE COURT: Again, if counsel will press five star
10 one time on your line.

11 All right, who do we have from 212-408-2500?

12 MS. SPIGEL: Good morning, Your Honor, Robin
13 Spigel with Baker Botts. Your Honor, I'm here as counsel to
14 the Debtors. I'm having a little trouble getting on
15 GoToMeet.com right this second so I apologize for the delay.

16 THE COURT: No, take your time. We'll get you
17 there.

18 And we also have someone --

19 MS. SPIGEL: Okay.

20 THE COURT: -- from 713-229-5617.

21 MR. EASTLAKE: Yes, Your Honor, good morning,
22 David Eastlake of Baker Botts, proposed counsel for the
23 Debtor. I was raising my hand in the event Ms. Spigel was
24 having a technical issue. But it sounds like we have her
25 now. She will (indiscernible) --

1 THE COURT: Mr. Eastlake, we'll wait for
2 Ms. Spigel. I can barely hear you. The phone connection is
3 really bad.

4 MR. EASTLAKE: Okay, Your Honor, we'll work on
5 that. Thank you.

6 (Pause in the proceeding.)

7 MS. SPIGEL: Apologies, Your Honor. My apologies,
8 Your Honor, we're almost there.

9 THE COURT: Ms. Spigel, take your time. The only
10 thing COVID has really taught me is to be patient with
11 technology, so.

12 MS. SPIGEL: Okay. I apologize. Very stressful.

13 Okay. I'm ready. And the -- you see the blue
14 box?

15 MR. EASTLAKE: Blue box.

16 THE COURT: Ms. Spigel, I'm not seeing you yet.

17 MS. SPIGEL: Okay.

18 THE COURT: If you intended to have your camera
19 on, I don't see it.

20 MS. SPIGEL: Okay. One second. I think -- no --

21 (Ms. Spigel/Mr. Eastlake confer.)

22 MS. SPIGEL: I'm sorry. One second, Your Honor.
23 I apologize.

24 Okay. I think I am here.

25 THE COURT: Ms. Spigel, now I can see you. Thank

1 you.

2 MS. SPIGEL: Okay.

3 THE COURT: All right. How did you want to
4 proceed today, Ms. Spigel?

5 MS. SPIGEL: Thank you, Judge Isgur. Is the
6 camera okay? I realize it's very far away. Is that okay
7 for Your Honor?

8 Can we move that a little closer?

9 THE COURT: I mean, I can barely see you so it's
10 probably a good idea if they'll move the camera about six
11 feet closer. Let's keep going closer.

12 MS. SPIGEL: Can you go --

13 THE COURT: Why don't we just get right up where
14 we can see her?

15 Ms. Spigel, good morning. Why don't you go ahead
16 and proceed?

17 MS. SPIGEL: Apologies, Your Honor. Thank you
18 very much. Again, for the Record, Robin Spigel, Baker
19 Botts, counsel for Griddy Energy. On the line also with me
20 are certain of my colleagues.

21 I'm not familiar with your procedure. Should I go
22 through each person from the firm who's on the line or
23 should the fact that they registered their appearance, is
24 that sufficient?

25 THE COURT: The electronic appearances are what

1 we're going to rely on so that we can move right into the
2 hearing.

3 MS. SPIGEL: Okay. Thank you, Your Honor. And
4 thank you for taking the time today to see us first -- on
5 this first day hearing of the case. We appreciate Your
6 Honor's time. I know there was a lot of paper filed
7 yesterday over a long period of time so we definitely
8 appreciate your time.

9 Just as an initial matter, I wanted to let you
10 know that two declarants from the company are on the line.
11 With me here is Mr. Michael Fallquist, who is the Chief
12 Executive Officer of the company. Also on the line is
13 Mr. Roop Bhullar, who is the Chief Financial Officer of the
14 company.

15 I'd like to just get some administrative matters
16 out of the way.

17 THE COURT: All right.

18 MS. SPIGEL: Okay. A copy of the first day
19 pleadings was sent to the U.S. Trustee's Office at the end
20 of last week. And we've spoken to the U.S. Trustee's Office
21 and received some comments from the U.S. Trustee's Office
22 and incorporated those comments into what was filed. There
23 were a few outstanding items by the time we filed our
24 motions and orders, and so when we go through the motions,
25 we'll point out, you know, where the resolutions are with

1 the U.S. Trustee. I believe that we're resolved on all
2 matters one way or another.

3 Also, notice of this morning's hearing was sent by
4 expedited means to the top -- well, it's the top 30
5 creditors, but we only really have 19 creditors listed on
6 that top 30, so that went to all of them, including the
7 Electric Reliability Council of Texas, or ERCOT, the
8 Debtor's secured creditors, the Office of the Attorney
9 General of the State of Texas, the Public Utilities
10 Commission of Texas, the United States Attorney's Office for
11 the Southern District of Texas, the Texas Comptrollers of
12 Public Accounts, the IRS, and then anyone who filed a notice
13 of appearance by the time that we served it. I'd ask that
14 the certificate of service filed by Stretto at Docket No. 26
15 and is attached to exhibit list as Docket No. 27-3, that
16 that be admitted into evidence.

17 THE COURT: Is there any objection to the
18 admission of 26 and 27-3? If anyone has an objection,
19 please press five star.

20 (No audible response)

21 THE COURT: All right, those are admitted.

22 (Debtor's Exhibits Nos. 26 and 27-3 were received in
23 evidence)

24 MS. SPIGEL: Thank you, Your Honor.

25 It also -- unless Your Honor has an objection or

1 if anyone else has an objection, I'd like to offer into
2 evidence the first day Declaration of Mr. Fallquist, the
3 CEO, which was filed with this Court on March 15th at Docket
4 No. 21, and attached to exhibit list as Docket No. 27-1,
5 since many of the first day motions rely on his Declaration.
6 He is here with me and available for cross-examination.

7 THE COURT: So I've had the chance to read both of
8 the two Declarations. Let me see if anyone objects to their
9 admission first, and then we're going to see if anyone has
10 any examination for the two witnesses.

11 So, first, if anyone has any objection to the
12 admission -- let me see, I've got Mr. Lippman here.
13 Mr. Lippman, go ahead, please.

14 MR. LIPPMAN: Yes, Your Honor. This is Kevin
15 Lippman here on behalf of ERCOT.

16 I was just noticing that my electronic appearance
17 apparently didn't get recorded. But the only comment I have
18 on the first day Declaration is that we don't oppose any of
19 the relief being sought today, but we request the Court to
20 limit the Declaration to today's hearing because there are
21 comments in the Declaration which ERCOT does not agree with
22 but believe at a subsequent hearing is probably the
23 appropriate time to address them.

24 THE COURT: All right. Does anyone else have any
25 objection to the two Declarations?

1 (No audible response)

2 THE COURT: All right, I'm admitting the two
3 Declarations for all purposes but for today only. They are
4 not admitted for any subsequent hearing unless they are
5 offered at that time and admitted at that time. So I'm, in
6 effect, sustaining Mr. Lippman's mini objection, but
7 admitting them for the purpose of today.

8 (Debtor's Exhibits Nos. 21 and 27-1 received in
9 evidence)

10 THE COURT: I didn't think you were going to agree
11 with very many of the ERCOT-related statements, Mr. Lippman,
12 so I'm not very surprised at the objection.

13 Does anyone have any cross-examination for either
14 of the two declarants that they wish to undertake at this
15 point? Again, if so, please press five star.

16 Once you press five star and I enable your line,
17 by the way, you are enabled for the rest of the hearing, so.

18 (No audible response)

19 THE COURT: Okay. The two are admitted and there
20 is no cross-examination.

21 Ms. Segal (sic) -- I'm sorry, it's
22 Spigel, I've been mispronouncing it. I apologize to you,
23 Ms. Spigel.

24 MS. SPIGEL: That's okay, thanks, thank you, Your
25 Honor. And thank you for admitting those Declarations

1 evidence for today's -- the purpose of today's hearing.

2 Your Honor, we are here because of Winter Storm
3 Uri and the extreme electricity pricing that occurred in
4 Texas during this storm. Given the unique circumstances
5 here where my client was solvent before the storm, and
6 because of what happened during the storm, including that
7 extreme pricing, we thought that it would be good to hear
8 from the CEO of the company just from a very brief, high
9 level so you can understand what the product was that Griddy
10 was offering and how it worked, right? We believe that it's
11 important background to understand how we got to this place
12 where we are seeking to liquidate Griddy.

13 THE COURT: All right, we can do that.

14 MS. SPIGEL: Thank you, Your Honor.

15 MR. FALLQUIST: Thank you, Robin. Good morning,
16 Your Honor. Thank you for your time today. My name is
17 Michael Fallquist, and I am the Chief Executive Officer of
18 Griddy.

19 THE COURT: You're -- hold on, wait a second. So,
20 okay, so we've admitted your Declaration and now we're going
21 to have Mr. Fallquist testify as well? Is that -- I thought
22 you were going to put somebody else on. So this --

23 MS. SPIGEL: Oh, well, --

24 THE COURT: -- is going to be -- that's fine. I
25 just wanted --

1 MS. SPIGEL: Yeah, and --

2 THE COURT: -- to know what we're doing.

3 MS. SPIGEL: Right. And, Your Honor, this is, I
4 guess, technically less testimony, his Declaration is
5 admitted into evidence, but more of we thought that it would
6 be good for you to hear just from him as to what the product
7 was because I think, like I said, it's just important to
8 understand the background. I will get into a presentation,
9 but we just wanted to get -- let you hear from him
10 personally just the story of what the company does.

11 THE COURT: So this is in the form of a non-
12 evidentiary opening statement? I just want to know what our
13 Record is --

14 MS. SPIGEL: Yeah.

15 THE COURT: -- going to look like.

16 MS. SPIGEL: Yes, Your Honor.

17 THE COURT: Does anyone object to having a -- it
18 will not be admitted for any purpose. It's done for the
19 purpose of background. Anyone object?

20 (No audible response)

21 THE COURT: All right. I've never done this
22 before but we'll take our shot.

23 Go ahead, please.

24 MS. SPIGEL: Thank you, Your Honor.

25 THE COURT: Thank you.

1 MR. FALLQUIST: Yeah, thank you, Your Honor.

2 Again, my name is Michael Fallquist.

3 I'm the Chief Executive Officer of Griddy Energy.

4 I've served in this role since December, 2020, a period of

5 just over three months. Griddy Energy is a licensed retail

6 electric provider in Texas. Prior to Winter Storm Uri,

7 Griddy had approximately 29,000 customers and 30 employees.

8 Griddy was solvent.

9 Griddy's business model was simple. Our customers
10 paid a fixed monthly membership fee of \$9.99. We charged
11 the same monthly membership fee regardless of whether the
12 price of electricity was high or low. Our customer value
13 proposition was two-fold. First, we provided electricity at
14 wholesale prices. We passed through the cost of electricity
15 to our customers with no markup -- exactly what we paid, the
16 customer paid.

17 Second, we provided our customers with information
18 and alerts about electricity prices and their electricity
19 usage. Specifically, we provided our customers with real
20 time wholesale electricity prices that changed every five
21 minutes. Alerts and notifications when prices were above or
22 below threshold, such as a price spike alert or low price
23 notification, future electricity price projections based on
24 ERCOT's day-ahead market prices for the remainder of the
25 current day and the next day, historical electricity usage

1 and cost patterns at a monthly, daily, and hourly level, and
2 historical billing, including the average cost of
3 electricity each day.

4 The information we provided our customers put them
5 in control of how much they paid for electricity with Griddy
6 as they could shift their electricity usage throughout each
7 day in response to high or low electricity prices. The
8 Griddy business model worked.

9 Prior to February, 2021, Griddy customers saved
10 more than \$17 million in aggregate since the business was
11 launched in 2017. That's compared with the EIA Texas
12 average electricity rate. The business model worked in a
13 market where the grid was reliable and market forces of
14 supply and demand determined the price of electricity.

15 Unfortunately, during Winter Storm Uri in February
16 2021, the electric grid was not reliable and market forces
17 did not determine the price of electricity, as the price of
18 electricity was set by regulators in response to challenges
19 on the electric grid. The wholesale price of electricity in
20 Texas is subject to a \$9,000 per megawatt hour market cap.
21 Since the market cap was set to \$9,000 in 2015, the price of
22 electricity has reached the market cap based on market
23 forces of supply and demand for 12 15-minute intervals for a
24 total of three nonconsecutive hours in six years. By
25 contrast, in February 2021 regulators set the price of

1 electricity to the market cap of \$9,000 per megawatt hour
2 for 87-1/2 consecutive hours. Because Griddy passes through
3 the wholesale price of electricity to our customers with no
4 markup, our customers paid this price for electricity. This
5 resulted in electricity charges to our customers that were
6 approximately 300 times more than normal from February 15th
7 to February 19th.

8 Unlike past periods of temporary high prices where
9 Griddy customers used the information we provided them to
10 shift their electricity usage throughout the day to minimize
11 costs, this was not the case in February 2021 because there
12 was no place to go. For 87-1/2 consecutive hours, our
13 customers paid the market cap price for electricity and can
14 do nothing about it. We now find ourselves in the situation
15 where we were a solvent and thriving business just one month
16 ago, but today Griddy and its customers are just collateral
17 damage of the actions taken by others surrounding Winter
18 Storm Uri.

19 Thank you, Your Honor.

20 THE COURT: Thank you.

21 Does anyone else wish to make any sort of an
22 opening statement?

23 MS. SPIGEL: Thank you, Your Honor. It's Robin
24 Spigel again.

25 I appreciate Your Honor allowing us to allow the

1 CEO to just make a preliminary statement. I would like to
2 also -- I'm sorry. I would also like to proceed, unless
3 Your Honor would like to do it in a different way, because I
4 know the pleadings filed provide full details, but I also
5 propose to provide a high-level summary regarding the events
6 that led the company to filing and the anticipated
7 trajectory of these cases.

8 THE COURT: Thank you, Ms. Spigel.

9 Go ahead, please.

10 MS. SPIGEL: Thank you.

11 So as Mr. Fallquist said, the company is a retail
12 electric provider. So it buys power on the wholesale market
13 and sells it to its customers at that price it purchases,
14 right? It's passed through, and it has a 9.99 per month,
15 per member membership fee. So during the storm, for Griddy
16 how it worked is that their -- and this is a very simplified
17 explanation, just to be clear. But there's power
18 generation, right? ERCOT purchased from the power
19 generators the electricity; Griddy bought it, the
20 electricity from ERCOT on behalf of its customers; and the
21 electricity actually goes from the power generators through
22 the transmission and distribution utility lines as delivered
23 to the customers.

24 With respect to Griddy generally, if I can just
25 take a step back, the -- in a transaction that closed on

1 December 4th, 2020, the ownership of Griddy was sold to a
2 new ownership group and a new management team was appointed,
3 which included Mr. Fallquist and Mr. Bhullar, each of whom
4 are also indirect minority owners of the company. And the
5 Debtor is a wholly-owned subsidiary of Griddy Holdings, LLC.
6 There is also other non-debtor affiliates that are part of
7 the corporate family.

8 Griddy had two secured facilities: One was a
9 credit agreement with Macquarie and a related ISDA
10 agreement. The borrowing base under its credit facility was
11 in the maximum amount of \$15 million, and it allowed Griddy
12 to issue LC's to market participants, regulators, and
13 independent system operators, as was required in the
14 ordinary course of its business.

15 The Debtor is required to reimburse Macquarie to
16 the extent such letters of credit are drawn. And currently
17 there's one LC in the amount of \$300,000 that remains
18 outstanding. The Debtor also had an ISDA master agreement
19 with Macquarie Energy, pursuant to which it could purchase
20 electricity on standard market terms. The obligations under
21 both of those facilities are secured by substantially all of
22 the assets of the company, as well as certain assets of its
23 parent and affiliates.

24 As of the petition date, the aggregate amount that
25 was owed to the secured lenders was \$1.448 million and

1 change, and that's exclusive of accrued and unpaid interest,
2 fees and expenses, and letter of credit reimbursement
3 obligations. As of the petition date, the company had
4 approximately 32-1/2 million of unsecured obligations,
5 that's exclusive of any financial litigation claim, with
6 ERCOT being the number one creditor owed a total of in
7 excess of 29 million.

8 Your Honor, as we've said before, right, we're
9 here because of Winter Storm Uri and the electricity pricing
10 that occurred in Texas during the storm. While Griddy was
11 solvent just month -- just one month ago, the business was
12 obliterated by the extreme pricing that was put in place.
13 And just for reference, with respect to the 9,000 per
14 megawatt real time settlement price cap that was held for
15 87-1/2 hours that Mr. Fallquist referred to and is in his
16 Declaration, that translates to \$9 a kilowatt hour that's
17 charged to customers.

18 And I think while electricity prices during the
19 storm would have naturally been higher than what -- in
20 normal, non-extreme weather conditions, the average in
21 normal time that a Griddy customer pays was approximately
22 .098 cents per kilowatt.

23 THE COURT: Point oh, nine, eight cents, meaning
24 nine cents or meaning nine one-hundredths of a cent?

25 MS. SPIGEL: Meaning nine one-hundredths of a

1 cent, so a penny. And that's the average over, you know, a
2 several year period of time, but that is the average price.

3 MR. FALLQUIST: Correction, ten cents is what the
4 all-in rate was.

5 MS. SPIGEL: Oh, my apologies. Okay, ten cents.

6 Apologies, Your Honor.

7 The company took steps to try and mitigate the
8 effects of the high pricing and urged its customers to
9 switch to other providers. That was at the beginning of the
10 storm. You may have read about it in the newspapers.
11 Griddy sent emails, texts, and robocalls urging customers to
12 switch --

13 THE COURT: I read about it in the Declarations I
14 think.

15 MS. SPIGEL: Okay, thank you.

16 Despite its efforts, right, not being good for the
17 bottom line, Griddy was concerned with its customers. And
18 it remains so. I mean, in total, through its aggressive
19 outreach about 10,000 of its customers were able to
20 successfully transition to other providers. But for those
21 that were remaining who didn't or couldn't move to another
22 provider, Griddy tried to get ERCOT to mass transition its
23 customers to another provider of last resort to avoid the
24 further extreme pricing exposure.

25 In fact, Griddy sought emergency relief on the

1 evening of February 16th to mass transition the customers
2 from ERCOT because Griddy knew that it wouldn't be able to
3 meet the collateral demands that were being made by ERCOT.
4 Had ERCOT been able to or had they mass transitioned those
5 customers, we believe that would have protected ERCOT and
6 that would have protected the customers. But unfortunately
7 those customers were not mass transitioned, right?

8 And so during the storm, customers obviously need
9 electricity. Griddy purchases the electricity during this
10 storm from ERCOT, and that's the transmission and utility
11 distribution service providers deliver it to the customers,
12 right? It leaves Griddy in an untenable position because
13 it's buying electricity because customers need the
14 electricity during the storm, and it's buying it on their
15 behalf, but the collection from customers were the only way
16 to pay ERCOT. And the prices were so high that the
17 collections were insufficient.

18 And so ERCOT's putting -- pushing Griddy to pay,
19 you know, outsized amounts, and ERCOT was pushing Griddy to
20 put up more collateral. And Griddy did what it could and
21 paid the ERCOT bill that it could. In fact, it paid
22 millions of dollars to ERCOT during this period. The
23 amounts it got from its customers it paid to ERCOT.

24 On February 21st, after the storm, the PUCT issued
25 a press release that strongly urged reps to delay billing

1 and collections for residential and small customers, small
2 commercial customers. So Griddy ceased active collection
3 efforts at that point. But there was continued demand for
4 payments and continued demand for collateral, and there
5 weren't any or very little incoming funds at that point.
6 And so without being able to meet the demands, ERCOT then
7 forced the mass transition of Griddy's customers, so not
8 during the storm but after. And that mass transition
9 started on February 26.

10 And so here we are after the storm and two weeks
11 after the mass transition, there's 19 creditors listed on
12 the top creditor list. ERCOT is listed as being owed
13 approximately 29 million. The transmission distribution
14 service providers are owed in total around 2.7 million.
15 Griddy's credit card processor is owed over a million
16 dollars from what I believe are customer-disputed charges.
17 In other words, the winter storm was an unprecedent event in
18 Texas, and the high pricing that was held in place destroyed
19 businesses and materially affected people's lives.

20 Yesterday, Your Honor, we filed a suite of first
21 day motions with a proposed Plan of liquidation, a proposed
22 Disclosure Statement, and a motion to approve the Disclosure
23 Statement. That motion is not on for today, Your Honor.
24 But Griddy comes to the Court to try and implement an
25 orderly and judicious liquidation. And what do I mean by

1 that? The proposed Plan provides for at a very high level
2 for the secured lender to give up to other creditors for the
3 benefit of the estate approximately 40 percent of the
4 principal amounts of what it's owed. It provides for
5 general unsecured creditors to share in available cash. And
6 the net proceeds from any recoveries on claims against
7 others related to the storm, if there are any, a plan
8 administrator would be appointed to decide whether there are
9 any causes of actions to pursue.

10 And, importantly, and I think the key feature of
11 this plan, is that it provides for a unique provision. It
12 provides for a customer class. So the customer class is in
13 exchange for mutual releases between the Debtor and certain
14 other parties on the one hand, the customers -- and it's
15 those customers that -- who will vote in favor of the Plan
16 or abstain from voting -- will be released from all unpaid
17 electricity bills. Right?

18 There are approximately 24,000 people in the State
19 of Texas that owe Griddy a total of more than \$29 million.
20 And if the plan is confirmed and the Court approves those
21 releases, a material number of Texans will be able to have
22 the certainty that collection agencies won't be knocking at
23 their door, that there won't be lawsuits related to unpaid
24 electricity bills, and that their credit scores won't be
25 affected because they couldn't pay their electricity bills.

1 We think the Plan and the customer class is very
2 unique and important. And Griddy's customers have always
3 been its priority. The Plan is being proposed to try and
4 solve what we believe is a serious issue and is lingering in
5 the public.

6 Griddy has extremely limited resources at this
7 point. So in order to effectuate this Plan, Griddy is
8 seeking to put the case on an expedited timeline, but at the
9 same time providing parties in interest due process. So as
10 I said, we filed the Plan and Disclosure Statement and the
11 motion to approve yesterday. Later during this hearing we
12 are seeking to set a bar date expeditiously. We expect to
13 file the Schedules and SOFAs imminently, and that the bar
14 date will be keyed off of that filing. And we'll be asking
15 the Court to conditionally approve the Disclosure Statement
16 in the next three to four weeks with a confirmation hearing
17 four to five weeks thereafter.

18 All told, we hope Griddy's confirmation to occur
19 in 80 to 85 days. We believe we don't have the resources to
20 go much beyond that. But we want to implement this Plan, we
21 think it's important, and we think getting the first day
22 relief approved today is the first step on this journey.

23 A few other things I just want to mention before I
24 turn the podium to my colleagues. First, Griddy has put in
25 an independent director in place as a seasoned, former

1 bankruptcy professional. This person was a consultant to
2 the company in the last few weeks and is up-to-speed both on
3 the company and the proposed Plan.

4 Second, since the storm, Griddy has been talking
5 to the State of Texas Attorney General's Office. The State
6 of Texas AG's office started a civil investigative demand
7 against Griddy and others after the storm. The AG's office
8 also commenced a lawsuit against Griddy since the storm.
9 Over the last few days, we have been discussing with the
10 AG's office Griddy's proposed Plan, and the parties have
11 agreed to try and work cooperatively together in good faith.

12 Yesterday, before the filing, the parties entered
13 into a short agreement whereby the civil investigative
14 demands and the lawsuit has been abated while the parties
15 try to work together in good faith. And while the Attorney
16 General's Office hasn't taken an official position yet with
17 respect to the Plan, Griddy believes that the plan aligns
18 with what the AG's office was ultimately trying to achieve
19 with this lawsuit, to give the people of Texas negatively
20 affected by the storm and the extreme pricing, some relief.

21 I believe Ms. Obaldo from the AG's office is on
22 the line. I'm not sure whether she wants to add or clarify
23 anything I've said or if Your Honor has any questions with
24 this?

25 THE COURT: I'm going to let you finish your

1 statement and then we're going to see if anybody else wants
2 to make a statement.

3 MS. SPIGEL: Thank you, Your Honor. I'm almost
4 done.

5 THE COURT: No, I'm not --

6 MS. SPIGEL: Just lastly, Your Honor, --

7 THE COURT: -- I wasn't -- I'm not trying to rush
8 you, just telling you what the game plan is.

9 MS. SPIGEL: Okay. Thank you, I appreciate that.

10 And just lastly, Your Honor, yesterday Griddy
11 removed a lawsuit from State Court to the Bankruptcy Court.
12 The lawsuit includes Griddy Energy and its parent, Griddy
13 Holdings. No formal relief has yet been sought, but we have
14 removed it because we believe that the claims against Griddy
15 Holdings are necessarily intertwined with Griddy Energy. I
16 don't think at this point I need to get into the merits of
17 that lawsuit, but I just wanted to alert you because it
18 shows up on the docket. That is something that we're going
19 to need to be dealing with in the next couple of weeks.

20 THE COURT: Ms. Spigel, thank you.

21 Let me see if I've got anyone else that wishes to
22 make an opening statement. I do have Ms. Ryan I think wants
23 to speak. Ms. Ryan, good morning.

24 MS. RYAN: (No audible response).

25 THE COURT: Ms. Ryan, you may have your own lined

1 muted because I'm not hearing you. I've got your line
2 unmuted here.

3 MS. RYAN: (No audible response).

4 THE COURT: Ms. Ryan, I'm still not able to hear
5 you. We'll come back to you.

6 I have somebody from 713-963-8881. Who do we have
7 from that number?

8 MR. POTTS: Your Honor, this is attorney Derek
9 Potts.

10 THE COURT: Mr. Potts, I'm going to let you go
11 ahead and then we'll come back and we'll hear from Ms. Ryan.

12 Go ahead, Mr. Potts.

13 MR. POTTS: Thank you.

14 THE COURT: You're class action counsel.

15 MR. POTTS: I'm class action counsel, that's
16 right, Your Honor. We -- this case was removed two hours
17 before a hearing that was supposed to occur yesterday in
18 Harris County District Court. It was an emergency TRO
19 hearing that was going to take up a couple issues, one of
20 them to present -- to prevent this allocation of resources.

21 Our claim is not just about pending bills. Our
22 claim is about disgorgement of monies that were collected.
23 And as you heard from the CEO earlier, between February 15th
24 and February 19th, tens of millions of dollars we believe
25 were collected by Griddy from the consumers of -- from their

1 customers, the consumers of Texas. This money was collected
2 involuntarily. It was done through automatic debits and
3 credits these peoples' accounts.

4 And so I just wanted to make the Court aware of
5 that. If there's discussions of a customer class, we
6 certainly need to be involved in that. We've not been
7 contacted or told anything about it. And we believe the
8 class is going to be much more significant than forgiving
9 current bills. It's going to be about reimbursement and
10 disgorgement of money that was wrongfully collected during
11 those four days.

12 THE COURT: Mr. Potts, thank you.

13 Does anyone else wish to address the Court in the
14 form of any sort of an opening statement?

15 MS. OBALDO: Your Honor, this is Rachel Obaldo. I
16 believe that my phone number may be tied to Ms. Abigail
17 Ryan's. I'm with the --

18 THE COURT: Oops.

19 MS. OBALDO: -- Office of the Attorney General.
20 That's okay, --

21 THE COURT: Okay, yes, I --

22 MS. OBALDO: -- I apologize.

23 THE COURT: No, that's fine. It came across as
24 her, but I will add your name to that list.

25 Thank you, Ms. Obaldo. Go ahead.

1 MS. OBALDO: Just to touch on what Ms. Spigel
2 referenced, I would like to reiterate that our office has
3 been in discussions and we continue our negotiations and
4 working in good faith. The hope is to fully resolve both
5 the lawsuit and the CID that's pending. So we are working
6 and we hope to get those resolved soon.

7 Thank you.

8 THE COURT: Thank you, Ms. Obaldo.

9 Does anyone else wish to make an opening
10 statement?

11 (No audible response)

12 THE COURT: All right. I need the evidentiary
13 record expanded with respect to the cash collateral motion
14 because there are parts of it I don't understand. And I
15 want to give parties an opportunity to introduce evidence so
16 that I can have a better understanding of what I'm being
17 asked to rule upon.

18 When I look at the Griddy three-week cash budget,
19 this is exhibit -- or, excuse me, it is ECF 18-3, there is a
20 restricted cash in the revenue account. I don't understand
21 why that is restricted or if it is, in fact, restricted in
22 favor of Macquarie. I also don't understand why if there's
23 this much cash, and if Macquarie has a lien on all the cash,
24 they need any adequate protection at all. And if they don't
25 have a lien in the cash, why they're entitled to any

1 adequate protections.

2 It just -- it makes no sense to me when you're
3 proposing to spend a total of a \$145,000 out of a cash
4 balance of \$5.7 million, why Macquarie deserves anything
5 under the Code? And I need a full evidentiary record before
6 I grant any relief of that nature, because what this means
7 is I don't understand what's going on. So it may be I
8 didn't read the Declarations properly or it may just be need
9 more evidence.

10 So I'll let you put on the evidence. Who's going
11 to be your witness on that, Ms. Spigel?

12 MS. SPIGEL: Your Honor, Mr. Roop Bhullar, the
13 Chief Financial Officer of the company, will be the witness.
14 My colleague, David Eastlake, is going to be addressing the
15 cash collateral motion and the evidence.

16 THE COURT: All right. So if I can get
17 Mr. Bhullar to go ahead and press five star one time on his
18 phone. Mr. Eastlake's line remains active. And we'll go
19 there.

20 Mr. Bhullar, good morning, sir.

21 MR. BHULLAR: (No audible response).

22 THE COURT: Okay. Would you say something to
23 where I can make sure your line is working?

24 MR. BHULLAR: Good morning, Your Honor.

25 THE COURT: Would you raise your right hand,

1 please, sir?

2 (Witness sworn.)

3 THE COURT: Thank you.

4 All right, Mr. Eastlake.

5 MR. EASTLAKE: Thank you, Your Honor. Before I
6 begin, I just want to make sure the Court can hear me. We
7 were able to move some things around during the hearing so
8 I'm hoping you can hear me now.

9 THE COURT: It's better but it still sounds like
10 you're in a cave.

11 MR. EASTLAKE: Okay, Your Honor, we'll power
12 through it. Just let me know if you can't hear me at any
13 point.

14 But David Eastlake of Baker Botts, proposed
15 counsel for Griddy Energy.

16 DIRECT EXAMINATION OF ROOP BHULLAR

17 BY MR. EASTLAKE:

18 Q Mr. Bhullar, would you please state your full name for
19 the Record and spell it?

20 A My full name is Roop Singh Bhullar, that's spelled
21 R-O-O-P, S-I-N-G-H, B-H-U-L-L-A-R.

22 Q Thank you, Mr. Bhullar.

23 Would you go ahead and just take a few -- a minute to
24 walk the Court through your educational background?

25 A Sure. I have a Bachelor of Management Studies and a

1 Bachelor of Laws from the University of Waikato in New
2 Zealand. I also have a Master's degree in Business
3 Administration from the Anderson School at UCLA.

4 Q And, Mr. Bhullar, what is your current role at Griddy?

5 A I'm the Chief Financial Officer.

6 Q And how long have you held that position?

7 A I was appointed to this role on December 4th, 2020.

8 Q And did you hold any prior position before becoming
9 Chief Financial Officer at Griddy?

10 A No other positions with Griddy. But in terms of my
11 professional background, I've spent the last 20 years in
12 various accounting and finance roles, including most
13 recently as the CFO of Prius (phonetic) Energy Trust,
14 publicly listed retail energy provider, where I was
15 responsible for the overall finance, accounting, treasury,
16 and relation functions of the business. Prior to that, I
17 was in senior financial roles at two other retail energy
18 companies: Commerce Energy and King Country Energy. And
19 prior to that, I started my career in public accounting
20 where I worked at Deloitte in various tax and accounting
21 roles.

22 Q Thank you, Mr. Bhullar.

23 What I'd like to do now is talk about the Debtor's
24 pre-petition debt structure. Can you generally describe the
25 pre-petition debt as it stands today?

1 THE COURT: Mr. Eastlake, --

2 A Sure.

3 THE COURT: -- why don't we take a minute?

4 Because your record is going to be so bad as hard as it is
5 to hear you. I think the phone has to be just a lot closer
6 -- your microphone, a lot closer to where you are. Let's
7 take the time to get it fixed.

8 (Pause in the proceeding.)

9 MR. EASTLAKE: Okay, Your Honor, is this better?

10 THE COURT: That is better, thank you.

11 MR. EASTLAKE: Okay, great.

12 BY MR. EASTLAKE:

13 Q Mr. Bhullar, I'd like to talk about the Debtor's
14 pre-petition debt structure. Could you just generally
15 describe the pre-petition secured debt and what that
16 consists of?

17 A Sure. On December 4th, 2020, Griddy entered into a
18 borrowing-based facility agreement with Macquarie
19 Investments, US, Inc. and Macquarie Energy, LLC. And under
20 this agreement Griddy had the ability to procure energy and
21 make various collateral postings to both utilities or
22 regulators in order for us to operate our business. The --
23 it was a \$15 million -- or it is a \$15 million facility.
24 And currently there is \$1.5 million outstanding, exclusive
25 of a \$300,000 letter of credit in favor of a prior credit

1 facility provider, and exclusive also of unpaid interest and
2 fees under our agreement with Macquarie.

3 Q And, Mr. Bhullar, could you describe the collateral
4 package?

5 A So under the agreement, Macquarie has first priority
6 security interest in liens of substantially all of Griddy's
7 assets, including guarantees from various other affiliate
8 businesses in the Griddy structure. And this includes liens
9 of all of Griddy's cash. Griddy currently has approximately
10 \$5.6 million of cash contained within three bank accounts
11 with JPMorgan Chase. And that is all part of Macquarie's
12 security package.

13 Q And just so the Record's clear, Mr. Bhullar, these --
14 the bank accounts would include the revenue account,
15 correct?

16 A That's correct.

17 Q Mr. Bhullar, turning to the Debtor's requested
18 immediate use of cash collateral, how would the Debtor be
19 harmed if it was unable to continue to use cash during this
20 case?

21 A The only cash that is available to Griddy is contained
22 in those three bank accounts that are all subject to
23 Macquarie's first priority security interest. Griddy has no
24 other access to cash which would be essential to
25 effectuating our proposed Chapter 11 winddown plan.

1 Q And do you believe that the Debtor could obtain any
2 third party financing to conduct its orderly winddown?

3 A We do not believe that in the current scenario of the
4 winddown, proposed winddown plan of Griddy, that there would
5 be available financing externally available to us.

6 Q Thank you.

7 And, Mr. Bhullar, were there negotiations leading up to
8 the bankruptcy filing regarding the Debtor's continued use
9 of cash collateral?

10 A Yes, there were extensive negotiations conducted by
11 Griddy and its counsel with Macquarie and their counsel.

12 Q And were you involved in these negotiations?

13 A Yes.

14 Q And how so?

15 A In responding to questions coming from counsel who were
16 in direct contact with Macquarie's counsel and taking
17 certain points back to the rest of the Griddy management
18 team and board for approval.

19 Q And as part of these negotiations, was Macquarie asking
20 for certain adequate protections to consensually agree to
21 allow the Debtor to continue to use its cash collateral?

22 A Yes, that is my belief.

23 Q And, Mr. Bhullar, based on the terms and conditions
24 that were ultimately agreed to by the parties for the
25 continued use of cash collateral, do you believe that they

1 are reasonable?

2 A I do believe they are reasonable.

3 THE COURT: Why is it reasonable to give them
4 anything if you're going to spend \$150,000 out of 5.6
5 million and they're owed 1.8? Why are you doing anything
6 for them?

7 THE WITNESS: Your Honor, I -- Griddy does not
8 have access to any other cash in order to pay professionals
9 and pay employees and to wind down the business and
10 effectuate our customer relief plan.

11 THE COURT: No, they're over-secured three to one.
12 Why do you need to provide them anything? Why can't you
13 just spend the money? Why are you giving them anything?

14 THE WITNESS: Your Honor, can I just take a minute
15 to outline the structure of our bank account and agreements
16 with Macquarie?

17 THE COURT: You may. But you've told me you owe
18 them roughly 1.8 or \$1.9 million and that they have a lien
19 on roughly \$5.7 million worth of cash. Normally that means
20 they're massively over-secured. And if what you want to
21 spend is a \$150,000, you don't give them any adequate
22 protection, you can spend it with a Court Order. I want to
23 know why you're giving them things, why you're giving them
24 anything, in order to be able to spend \$150,000.

25 THE WITNESS: My understanding is that we have

1 access to \$2.9 million in our operating account, which is
2 only subject to a shifting blocked account control agreement
3 with Macquarie. And then Macquarie will continue to have
4 full lender control of \$2.7 million, which is secured --

5 THE COURT: Yes. So why are you -- you're not
6 answering my question. You're telling me the structure. I
7 want to know why do you need to give them anything in the
8 way of adequate protection to get a Court Order that
9 authorizes you to spend \$150,000? I mean, what possibly
10 happened in these negotiations that you've described where
11 you all decided to give them something when all you're
12 trying to spend is 150,000 and they're three-to-one over-
13 secured? This isn't making sense.

14 THE WITNESS: Based on advice, I don't know what
15 other opportunities Griddy would have to use this cash,
16 which is otherwise --

17 THE COURT: Just get a Court Order that says you
18 can use it, and you don't need to give them any adequate
19 protection. Why are you giving them adequate protection?
20 Why do they need adequate protection? How are they impaired
21 by what you're doing? They remain massively over-secured.

22 MR. EASTLAKE: And, Your Honor, I'm happy to
23 address that, this is David Eastlake, at some point to
24 answer Your Honor's question.

25 THE COURT: Sure, go ahead, because I'm not -- I

1 mean, I asked you to put on a witness to tell me why we're
2 providing adequate protection and I didn't understand it.
3 That's why I keep asking. If you want to put on another
4 witness, that's okay, or you can tell me as a matter of law
5 why you need to do this, but I can't imagine this isn't
6 factually based. So I'm not understanding the facts on
7 which you have decided that it is reasonable to give them
8 any adequate protection to spend this money.

9 MR. EASTLAKE: Well, Your Honor, I think from our
10 perspective, we're not really giving them anything and --

11 THE COURT: Of course you are. You're stipulating
12 to the validity of all their liens.

13 MR. EASTLAKE: Correct, Your Honor. We don't have
14 any basis to believe that there's some issue with that, but
15 there is still --

16 THE COURT: Why would you give that away on Day
17 One? I don't know that I'm ever going to have a Committee
18 in this case, for example. I may, but it's hard forming a
19 Committee out of customers.

20 Why are you giving -- what under the law says it's
21 appropriate to give them anything at all?

22 MR. EASTLAKE: Your Honor, again, we recognize
23 that Macquarie is oversecured. The adequate protections in
24 the form of replacement liens and the superpriority
25 administrative claim, we don't think we ever get there. We

1 don't think there's going to be the diminution, but as part
2 of the --

3 THE COURT: Then why give it to them? Then why
4 give it to them?

5 MR. EASTLAKE: Because, Your Honor, as part of
6 these negotiations, this is what Macquarie wanted for deal
7 terms and --

8 THE COURT: Okay.

9 MR. EASTLAKE: -- Ms. Norfleet, she's on the
10 phone, and can offer the perspective from her client. But
11 if you look at the Order carefully, we really did push back
12 and we tried to keep it very limited in terms of what
13 Macquarie was going to get, its replacement liens, its
14 adequate protection superpriority claim. Again, those only
15 come into play if there's any diminution of value. We don't
16 think that'll be the case.

17 It also provides for continued monthly interest
18 payments. Your Honor, we're talking about \$7,000.
19 Moreover, Macquarie is oversecured and would be entitled to
20 post-petition accruing interest, so it's just really a
21 timing thing with a small amount of money and -- at issue.

22 And then finally, Your Honor --

23 THE COURT: I don't understand. You're paying all
24 their legal bills and you've negotiated a situation that
25 costs money. This is making no sense to me. I want

1 evidence to tell me why I'm going to make -- give them any
2 adequate protection and so far I have none.

3 Ms. Norfleet?

4 MS. NORFLEET: (No audible response).

5 THE COURT: Ms. Norfleet?

6 MS. NORFLEET: Good morning, Your Honor.

7 Kelli Norfleet, on behalf of Macquarie.

8 Mr. Eastlake is correct, our view was that this
9 was a fairly limited relief package. And again the
10 adequate --

11 THE COURT: Tell me under the law why you are
12 entitled to any adequate protection for the expenditure of
13 \$150,000 when you're three-to-one overprotected. What under
14 the law gives you that?

15 MS. NORFLEET: Well, Your Honor, we were looking
16 at the longer term of the case and not necessarily just a
17 three-week period in which they're going to spend about
18 \$150,000 and over the course of the case, you know, there
19 are any number of issues that could arise during the course
20 of the case like Mr. Potts alleging that money should be
21 disgorged.

22 THE COURT: Well, if you're saying that they're
23 not limited to 150,000 and they can spend all the cash, then
24 I understand. But I thought they were limited to 150,000
25 today and I was giving --

1 MS. NORFLEET: No.

2 THE COURT: -- you adequate protection today.

3 MS. NORFLEET: No, Your Honor. To be clear that
4 we are not seeking approval of a budget here and Griddy is
5 not limited to the budget that they filed. From what I
6 understand they're seeking, the Debtor's counsel has already
7 filed that budget. I think it was required under the local
8 conflict case procedures.

9 THE COURT: So how much money can they spend if we
10 sign this Order, all of it?

11 MS. NORFLEET: Their consent is for the use of any
12 cash collateral in the operating and segregated accounts,
13 Your Honor.

14 THE COURT: So that makes you oversecured by
15 \$900,000.

16 Why are you entitled to adequate protection?

17 MS. NORFLEET: Again, Your Honor, we were trying
18 to look to the longer term in the case and we don't know
19 what disputes are going to arise over -- whether any of
20 Griddy's money may be claimed by other creditors. And so
21 the adequate protection was intended as a backstop in case
22 those issues do arise. As I said, we don't expect there to
23 be a diminution value here.

24 THE COURT: And your client is willing to take a
25 40 percent discount on what it's owed?

1 MS. NORFLEET: Yes, Your Honor.

2 THE COURT: What's it getting in exchange for
3 that?

4 MS. NORFLEET: The agreement that was reached
5 regarding the treatment under the Plan was to facilitate the
6 plan process. Griddy believes that the plan process is the
7 most efficient way to address all the claims that have been
8 asserted against it and they have negotiated with Macquarie
9 to take a discount to facilitate that plan process.

10 THE COURT: And does Macquarie get anything in
11 exchange for the discount?

12 MS. NORFLEET: Macquarie is considered a released
13 party under the Plan, but there's an opt-out mechanism for
14 those releases, as is customary in the Southern District,
15 but I would suppose the real benefit is that all parties get
16 to try to resolve these issues in an efficient manner.

17 THE COURT: Okay. I'm denying the motion to use
18 cash collateral that includes the provision of adequate
19 protection. If the Debtor wants to file an amended motion
20 to use cash collateral or make an oral motion to use cash
21 collateral where they are this far overprotected and what
22 they want to spend is what I'm being asked to approve on the
23 budget, the Debtor may do so, but I am hearing no
24 justification for doing this.

25 This is a case of substantial public concern and

1 I'm not going to guess about what I'm doing. You're asking
2 me to guess. I decline. I have no evidence to support it.

3 Under controlling Supreme Court precedent,
4 adequate protection need not be provided to an oversecured
5 secured creditor unless there is a substantial possibility
6 of a diminution and the value of that collateral. I've
7 heard zero evidence of that, so I'm denying the motion as
8 pled.

9 Where do you want to go next?

10 MR. EASTLAKE: Your Honor, this is David Eastlake.

11 I would -- I'll take the Court up on its offer and
12 orally move to permit the Debtors' continued use of cash
13 collateral over the objection of Macquarie should they
14 continue to object to such use.

15 THE COURT: In what amounts? In the amount shown
16 in the budget you're trying to spend or some other amount?

17 MR. EASTLAKE: Well, really again going back to
18 also what Ms. Norfleet was talking about, we -- there really
19 isn't a set amount or a cap. Certainly for purposes of
20 today and the interim period, you know, that's what we
21 project to spend. We are working on a 13-week budget.
22 Mr. Bhullar's been working on that and he may be able to --
23 if we take the case a few weeks further out, kind of what
24 we're looking for -- looking at in a 13-week budget
25 scenario.

1 THE COURT: Are there objections to Mr. Eastlake's
2 oral motion?

3 (No audible response.)

4 THE COURT: All right. I'm going to grant the
5 Debtor the authority to -- I'm sorry, go ahead. Any
6 objection?

7 MS. NORFLEET: I apologize, Your Honor, Kelli
8 Norfleet, on of Macquarie.

9 Not necessarily an objection, perhaps a limited
10 objection, but our request would be that the authority to
11 use cash collateral only be for cash it needs in the revenue
12 and segregated accounts.

13 THE COURT: That part's granted.

14 MS. NORFLEET: Thank you, Your Honor.

15 THE COURT: All right. I'm authorizing the Debtor
16 orally on its oral motion to spend cash collateral, but not
17 to spend any money out of the restricted cash in the revenue
18 account without further order of the Court.

19 Where do we go now?

20 MR. EASTLAKE: Thank you, Your Honor.

21 MS. SPIGEL: Thank you, Your Honor. It's
22 Robin Spigel again.

23 At this point, I'd like to turn the virtual podium
24 over to my colleague, Jacob Herz, to present the First Day
25 -- the other First Day pleadings, if it suits Your Honor.

1 THE COURT: Thank you.

2 Mr. Herz, would you press five star one time on
3 your line please? Thank you.

4 MR. HERZ: Thank you, Your Honor.

5 THE COURT: Mr. Herz, go ahead please.

6 MR. HERZ: Thank you, Your Honor. Jacob Herz from
7 Baker Botts, on behalf of -- proposed counsel to the Debtor.

8 If it makes sense, Your Honor, we filed a proposed
9 Agenda, Docket No. 33, and we'll start moving through that
10 quickly, but we'll cut out No. 7 on the Agenda because it
11 was covered on the cash collateral issues.

12 To begin with, Your Honor, we'd like to thank the
13 Court for entering the Order approving Stretto's retention.
14 That was originally the first item on our Agenda. We just
15 want to let the Court know that we received informal
16 comments from the United States Trustee and that was
17 included in the Order that you approved.

18 THE COURT: All right. Thank you.

19 MR. HERZ: Your Honor, the second item on the
20 Agenda is the tax motion and this is at Docket No. 9.
21 Your Honor, the tax --

22 THE COURT: Given that there is no money in the
23 budget to pay the taxes with, why are we taking this up on
24 an emergency basis?

25 MR. HERZ: Your Honor, we're proposing at this

1 point a very modest amount of \$34,000. I'd have to confirm
2 with the client, but I don't think it needs to be paid
3 necessarily immediately, but if you look at the -- that's
4 only on account of the franchise taxes all pre-petition.

5 THE COURT: So when is it due? I don't have any
6 theoretical problem with that, but in the initial budget, I
7 saw nothing for taxes, so it made me think maybe we don't
8 have an emergency. When is that due?

9 Mr. Bhullar?

10 MR. BHULLAR: Franchise taxes are due on May 15th.

11 THE COURT: All right. Are there any taxes that
12 need to be paid between now and May 15th?

13 MR. BHULLAR: We currently believe that we're paid
14 up for all sales and use and gross receipt taxes based on
15 our estimate. I believe the motion was filed out of an
16 abundance of caution in case there was a change in the
17 numbers or anything like that, Your Honor.

18 THE COURT: All right. Mr. Herz, would it work
19 for you if we set final hearings in the case -- when would
20 you like those, what week would be best, the week of the 5th
21 of April, the week of the 12th of April? Tell me what you
22 need to get done.

23 MR. HERZ: Well, Your Honor, I would turn over
24 here to Ms. Spigel.

25 MS. SPIGEL: Your Honor, it's Robin Spigel. If I

1 may?

2 THE COURT: Sure.

3 MS. SPIGEL: I think that we would like final
4 hearings during the week of the 5th, if Your Honor is
5 available, or the week after either way. And it is fine for
6 us to have the tax motion not on an emergency basis. I
7 think we filed it, as Mr. Bhullar said, out of an abundance
8 of caution. There isn't an immediate need to pay the taxes.
9 But either --

10 THE COURT: How does April the 6th at 1:30 look
11 for your Second Day Hearings?

12 MS. SPIGEL: Mr. Bhullar, are you available on
13 April 6th? I just want to -- I'm sorry, this is awkward
14 over video, but I think that that is okay.

15 MR. BHULLAR: Yes, I'll be available.

16 MS. SPIGEL: Yes. Thank you, Your Honor.

17 THE COURT: Is there any party-in-interest that
18 objects to having Second Day Hearings on April the 6th at
19 1:30?

20 (No audible response.)

21 THE COURT: All right. In keeping what's our
22 policy that we only take up matters where there's an
23 emergency on First Day Hearings, we'll continue the taxes
24 motion. We'll take it up on April the 6th at 1:30. Let's
25 go to your next matter.

1 MR. HERZ: Thank you, Your Honor.

2 The next matter is the cash collateral motion and
3 that's filed at Docket No. 12.

4 THE COURT: Cash collateral or cash management?

5 MR. HERZ: I'm sorry, I apologize, cash
6 management.

7 THE COURT: All right. Go ahead, please.

8 MR. HERZ: Your Honor, in the cash management
9 motion, the Debtor seeks among other things authority to
10 continue to maintain its current bank accounts. They're all
11 at JPMorgan Chase, which is an approved depository, and that
12 as was mentioned in relation to cash collateral, includes
13 the segregated account, the revenue account, and also the
14 operating account.

15 In addition in the motion, the Debtor seeks
16 authority to continue to use its current business forms,
17 which are mostly electronic, and also to -- in the
18 circumstance it needs to, continue to engage in some
19 intercompany transactions, which doesn't expect would arise
20 during the case, but it's in there in an abundance of
21 caution.

22 THE COURT: All right. Is there any party that
23 has any objection --

24 MR. HERZ: Your Honor --

25 THE COURT: I'm sorry, go ahead.

1 MR. HERZ: I'd just say if Your Honor has --
2 unless Your Honor had any other questions --

3 THE COURT: Does any party have --

4 MR. HERZ: -- I'd ask that --

5 THE COURT: -- any objections to the cash
6 management motion?

7 (No audible response.)

8 THE COURT: Does any party have any objection to
9 the form of the Order on cash management? If so, you'll
10 need to press five star one time on your phone.

11 (No audible response.)

12 THE COURT: All right. Let me put the Order up on
13 the screen then.

14 (Pause in the proceedings.)

15 MS. SPIGEL: Your Honor, it's Robin Spigel.

16 I realize that we didn't put Central time on that
17 second line.

18 THE COURT: All of my times are Central, so you're
19 good.

20 MS. SPIGEL: Okay, perfect. Thank you.

21 THE COURT: And we'll just let all the service
22 occur electronically. I think this repeats the 4:00 o'clock
23 deadline.

24 Any objection to the few changes that I've made to
25 the proposed form of Order?

1 (No audible response.)

2 MR. HERZ: No, Your Honor.

3 THE COURT: All right. Thank you.

4 Mr. Herz, I'm going to go ahead and send this to
5 Mr. Laws to get docketed for us.

6 Tell me where you want to go next.

7 MR. HERZ: Thank you, Your Honor.

8 For the next items, I'll turn the podium over to
9 my colleague, Chris Newcomb.

10 THE COURT: All right. Mr. Newcomb, let me get
11 your line activated here.

12 Mr. Newcomb, good afternoon.

13 MR. NEWCOMB: Good afternoon, Your Honor.

14 Chris Newcomb with Baker Botts, on behalf of the Debtor. If
15 it's acceptable, Your Honor, I'll just continue down the
16 Agenda in order.

17 THE COURT: All right.

18 MR. NEWCOMB: The next motion, No. 4, on the
19 Agenda is the motion to pay certain obligations of the
20 Debtor's employees, and continue their benefits programs.
21 The Debtor currently has 16 employees. These employees are
22 critical to keeping the Debtor running and resolving
23 critical issues during the Debtor's wind-down and, of
24 course, significantly their employees depend on their
25 compensation and benefits programs for their livelihood.

1 The Debtor made its semimonthly payroll yesterday
2 prior to commencing the case so accordingly the Debtor
3 believes that it's paid all its pre-petition amounts with
4 respect to wages and benefits programs, but out of an
5 abundance of caution, wanted to seek authority to pay any
6 remaining pre-petition amounts that may have lingered that
7 have not been paid. And then the Debtor is also seeking
8 authority to continue to pay its employees and maintain its
9 benefit programs in the ordinary course post-petition.

10 The Debtor believes the retaining its employees
11 and keeping them focused is critical and that given sort of
12 the impending wind-down, there's a real risk of losing
13 employees if it fails to satisfy any of its wage or benefit
14 obligations.

15 We did receive some informal comments from the
16 United States Trustee's Office. We incorporated those in
17 the Order prior to filing the motion and we understand that
18 they don't object to the relief sought with those changes
19 made.

20 So I'm happy to answer any questions you have, but
21 otherwise we'd ask that the Court enter the Order approving
22 the relief set in the motion.

23 THE COURT: All right. Is there any objection to
24 the wages Order, all the employee obligations?

25 (No audible response.)

1 THE COURT: All right. I'm granting the motion
2 based on the declarations that have been filed. It's clear
3 you've got to keep these employees here if you're going to
4 get an effective plan in trying to get where we're going.

5 MR. NEWCOMB: Thank you, Your Honor.

6 THE COURT: I've signed the Order. We'll get that
7 docketed today.

8 Where do you want to go next?

9 MR. NEWCOMB: Thank you, Your Honor.

10 Next up is No. 5 on the Agenda, which is the bar
11 date motion. Through this motion, the Debtor respectfully
12 request that the Court set deadlines for creditors to file
13 Proofs of Claims in the case. Most prominently the Debtor
14 is seeking a bar date -- a general bar date that is 41 days
15 after the date that the Debtor filed its Schedules. It
16 expects to file its Schedules later this week. That's a bit
17 of a change from what was filed in the motion originally,
18 which I'll get into in a sec.

19 As Ms. Spigel has outlined, the Debtor has very
20 limited resources to make its way through the case and
21 achieve the benefits of the Plan that are proposed by
22 customers and creditors. We think setting the bar date now
23 on the first day plays an important role in sort of moving
24 us down that path towards completing the Plan in a way
25 that's sustainable for the Debtor's resources.

1 The Debtors have very few creditors. As
2 Ms. Spigel noted, we couldn't even fill out a top 30 list.
3 However, we do want to make sure that the Debtor's former
4 customers are given the opportunity to file claims if they
5 feel they have them. We don't believe that former customers
6 are owed any money, but we do want to allow them to assert
7 claims.

8 So we're proposing to serve approximately 57,000
9 former customers and, as you may have seen in the motion, we
10 propose to do so exclusively by electronic means. That's
11 the way that the Debtor historically communicated with its
12 customers exclusively and we think it's the most effective
13 way to reach them and also, of course, it would conserve a
14 significant amount of estate resources, as opposed to
15 service by First Class Mail, which would be fairly
16 expensive.

17 As I noted, the US Trustee did express some
18 concerns about the timeline. They wanted creditors to be
19 able to benefit from hearing what had to be said in the 341
20 Meeting of Creditors and so they asked us to extend the
21 timeline out. We ultimately agreed to push back the general
22 bar date and timing by seven days. We'd originally
23 requested it be set 34 days after the Schedules are filed
24 and now we're going to seek to have it entered 41 days
25 after.

1 So we understand with that change that the US
2 Trustee does not object to the bar date motion. That change
3 is not currently in the Order so we would have to file an
4 amended order to reflect that change.

5 THE COURT: Let me talk to you a minute about what
6 you mean by "former customer." A customer that did business
7 with you up until February 10th we'll call it, I got it that
8 you think it's really unlikely that they have claims and
9 notifying them electronically, you know, makes a lot of
10 sense. For folks after that, I guess they're today still
11 former customers, but very recently former.

12 MR. NEWCOMB: That's right.

13 THE COURT: And I'm concerned that they don't get
14 a Proof of Claim that they can complete. And I'm trying to
15 figure out how you're contemplating handling getting those
16 people Proofs of Claim and written notice. A lot of the
17 requests to keep everybody in electronic notice sure makes a
18 lot of sense even for those customers other than for the
19 very first mailing and I at least want to explore whether it
20 doesn't make some sense that for the first mailing, anyone
21 that was, in fact, a customer as of February 10th would get
22 a written notice with a written Proof of Claim and
23 thereafter all the notices would be electronic.

24 But I want to hear argument about that because I'm
25 not sure I'm right, but that was the concern that I had as I

1 read it.

2 MR. NEWCOMB: Sure, Your Honor. And just to
3 outline, my understanding from discussing it at relevant
4 length with our claims agent is the email notice that would
5 go out to the customers would include -- you know, it would
6 include sort of a link directly to the -- you know, a Proof
7 of Claim form and they would be able to fill that out
8 electronically directly so it would be -- it would sort of
9 ease the process from them having to see the form going on
10 and logging on just to start clicking on a link and be able
11 to do it, so we figured it would be significantly simpler
12 for them.

13 Again you know, there's potentially, you know,
14 within the time frame you talked about, 29,000 customers and
15 you know, that serving them, you know, based on the
16 estimates you've heard from the claims agent, that would
17 probably be approximately \$29,000 to do, which is a
18 significant sum for this Debtor.

19 And I think most importantly historically all
20 these customers have dealt exclusively with Griddy
21 electronically. Griddy has never sent them any bills,
22 they've never sent them really anything so they expect and
23 are accustomed to receiving communications from Griddy via
24 email. And so I think that is -- and that's sort of the
25 tested way that Griddy has communicated with them much more

1 so than their mailing address. So we think it's probably
2 the most effective way to reach them and also has the
3 benefit of conserving estate resources.

4 THE COURT: So if somebody gets a text from --
5 because as I understand it, you sometimes -- some people
6 you're communicating by email and others by text from what I
7 read in the declarations. If somebody gets a text from
8 Stretto relating to Griddy, are you telling me they can
9 click on that and immediately fill out a Proof of Claim?

10 MR. NEWCOMB: Yes. It would take them directly to
11 the place on the Stretto website that allows them to file a
12 Proof of Claim.

13 THE COURT: And is there anything in the proposed
14 Order or motion that would mock up what that's going to look
15 like?

16 MR. NEWCOMB: I don't know that we have that
17 currently, but we could probably pull something together or
18 sort of flesh out in more detailed language kind of what
19 that would look like, if that would be helpful.

20 THE COURT: But let me hear from others that -- as
21 to whether having essentially a one-click Proof of Claim
22 that is sent by email or by text is, in fact, adequate for
23 folks. I'm still not persuaded. I didn't realize you were
24 going to do the one-click issue to fill out a Proof of
25 Claim. That is helpful in terms of where we're going.

1 Can I hear from anyone else that has an issue with
2 that?

3 MR. POTTS: Judge, it's Derek Potts, class
4 counsel.

5 We have a major issue with that. But first and
6 foremost, I think it's premature to be setting a claim bar
7 date at this emergency hearing. We do have a class action.
8 Theoretically everyone is already a member of that class
9 action. There's a putative class action at this point. We
10 may have multiple claims.

11 People are going to be confused at this juncture
12 getting a claim form. And so we need to do discovery. I'm
13 not sure what your intent is with respect to our particular
14 case whether you're going to carve us out or not, but we
15 need class discovery, we need lists of all the customers so
16 we can tabulate that information.

17 So we would strongly object to this request and
18 we'd request that a bar date not even be set today.

19 THE COURT: We've already set a bar date. This
20 just changes it. So we need to figure out what we're doing.
21 A bar date is set by Local Rule.

22 What are you, Mr. Newcomb, going to tell me about
23 putative class members and their need to file out -- fill
24 out a Proof of Claim?

25 MR. NEWCOMB: I mean, Your Honor, they'd have the

1 same opportunity to file a Proof of Claim they would in sort
2 of any other case. I know there's certain standards in this
3 District for whether or not class members can file class
4 Proof of Claims, but I think they'd have the opportunity
5 just the same as anyone else to file a Proof of Claim.

6 And if they need to make a motion to allow
7 themselves to file a Proof of Claim, they'd have the
8 opportunity to do so. But I don't know that that needs to
9 change, you know, our ability to reach out to customers and
10 get them the opportunity to file a Proof of Claim. I'm not
11 really sure how that, you know, affects that and why that we
12 should have to slow down the process in order for them to do
13 what they need to do. They'd be able to file on behalf of
14 other creditors.

15 MS. SPIGEL: Your Honor, it's Robin Spigel.

16 THE COURT: Go ahead. Ms. Spigel?

17 MS. SPIGEL: I'm sorry to interrupt, but I just
18 would like to correct the Record because it's a purported
19 class. It is not a class action. They filed it as a
20 purported class. It hasn't been certified. So I just think
21 it's important for the Record to reflect that.

22 THE COURT: I think he used the word "putative"
23 class. It's a putative class, right? They filed one
24 seeking class certification.

25 MS. SPIGEL: Thank you.

1 THE COURT: So let's take just this category of
2 customers from February 10th until the date of power. Tell
3 me administratively why you need to know whether those
4 people have claims that would fall into group or class type
5 of claimants. Explain to me why you need this kind of bar
6 date. I've got it for the whole rest of the world why you
7 need it. Why do you need it for this group?

8 MR. NEWCOMB: Well I think, Your Honor, just for
9 the ability to prosecute a plan. I mean, we'll use that
10 information to help solicit the Plan, but to prosecute a
11 plan we're going to need to know sort of the quantity of
12 claims and, you know, to make sure that we can prove that we
13 meet the standards for confirmation. And again, I think
14 it's important for solicitation to ensure that anyone who
15 asserts that they have a claim in a particular amount that
16 we're able to go out and seek that. It establishes the
17 amount of their claim as well for purposes of tabulating
18 votes on the Plan.

19 And if someone files a Proof of Claim, they're --
20 under our proposed Disclosure Statement solicitation
21 procedures, their claim will be set at that amount; whereas,
22 alternatively if they fail to file a claim, we would propose
23 to set that amount at \$1 for purposes of solicitation, which
24 is obviously not up for today, but, you know, that's among
25 the rationales for why we would want to go ahead and have

1 the customers file claims.

2 THE COURT: Mr. Newcomb, this is something I've
3 not thought through and I want you and Mr. Potts both to
4 address it if you would.

5 Can we set two bar dates? Can we set a bar date
6 that says, "To be counted for voting purposes under the
7 Plan, your Proof of Claim must be filed within 41 days, but
8 to have an allowed claim, your Proof of Claim will remain at
9 the existing bar date, which is 90 days from the petition
10 date," or do you need to have the same bar date for both
11 purposes under the law? And I don't know. I don't think
12 I've done this before, but I'm trying to address both
13 concerns.

14 MR. POTTS: Judge, this is Mr. Potts.

15 In terms of them just gathering information about
16 claims, that's completely different than filing a claim as a
17 member of the class and I think answers the question. So I
18 think it would be fine for them to gather some information
19 in 41 days, but as long as that no way limits a person's
20 ability to participate in the class and file a claim as a
21 class member, we would not have an objection to that.

22 THE COURT: Well, what about voting on the Plan?

23 MR. POTTS: I think 41 days is fine for that, as
24 long as it doesn't affect their ability to make a claim
25 under the class action.

1 THE COURT: Mr. Newcomb, can -- I don't know this
2 and so I don't know that I should rule on it right now, but
3 what's your view on whether we can set two bar dates, one
4 for plan administration purposes, but another one for claim
5 for distribution purposes?

6 MR. NEWCOMB: I mean, Your Honor, my concern there
7 is just that it would be confusing to the claimant class,
8 you know, seeing that sort of they have to file a claim by
9 one date and then later on file another claim. I'm
10 concerned that people might file a claim initially and then
11 fail to file one later on if it is required under the Plan.

12 THE COURT: Well, no, they wouldn't have to file
13 two. You tell people, "Here's your Proof of Claim form. If
14 you want to be able to vote on the Plan, your deadline is
15 April 1, otherwise your deadline is May 15th," and I'm
16 making up those dates, but you tell people they only file
17 one. I don't know if that's legal and I probably need to
18 give you all a chance to work through and think about that.

19 The Rules certainly would allow a 41-day bar date
20 under the Federal Rules of Bankruptcy Procedure. We already
21 set a 90-day bar date starting at the petition date by Local
22 Rule. So I think this is something we've got to work
23 through pretty quickly.

24 Does it make some sense to come back at the end of
25 this week and try and work through this question?

1 MS. SPIGEL: Your Honor, it's Robin Spigel.

2 MR. NEWCOMB: I think --

3 MS. SPIGEL: May I speak?

4 THE COURT: Sure.

5 MS. SPIGEL: Sorry. I'm sorry to interrupt
6 Mr. Newcomb in particular, but I'm the most familiar with
7 the Plan, so I just want to just discuss how it works and I
8 know it's not before anyone and it was filed last night
9 so -- but I just want to give people a preview, right?

10 So if you're a customer, you are able to vote in
11 Class 5 of the customer class. If you vote to reject, then
12 you automatically become an unsecured creditor if you have
13 filed a Proof of Claim with the Court.

14 So you need to -- if you believe you have a claim
15 and you reject the customer class, you still need to assert
16 that Proof of Claim.

17 THE COURT: So let's talk about voting and let's
18 talk about releases.

19 Are you telling me that if someone doesn't want to
20 do a mutual release, that they have to vote "No" on the
21 Plan?

22 MS. SPIGEL: As a Class 5 customer, yes. But they
23 then automatically -- on the ballot, they automatically
24 become a Class 4 general unsecured creditor. They can opt
25 out of the releases, they can reject the Plan as a Class 4

1 general unsecured creditor.

2 THE COURT: Okay.

3 MS. SPIGEL: The customer releases are totally --
4 you know, are optional.

5 THE COURT: Okay. So do you know sitting here
6 today what the law is on whether I can have a bar date that
7 is -- that where I leave the current bar date alone at
8 90 days, but we tell people, "If you haven't filed your
9 Proof of Claim by X date, then you may not vote on the
10 Plan." Is that permissible under the law? I don't know.

11 MS. SPIGEL: I don't know, Your Honor. I would
12 venture to guess that you have to file your Proof of Claim
13 in order to be given an opportunity to vote on the Plan, but
14 I don't know for sure. We can look into it.

15 THE COURT: Does it make sense to come back maybe
16 on Friday and -- when people can think through this
17 question, Mr. Potts, and you can brief whether we can do
18 sort of a split bar date of this nature?

19 MR. POTTS: Yes, Your Honor. I'd like the
20 opportunity to do some research and confer with everyone.

21 MS. OBALDO: Your Honor, if I may? This is
22 Rachel Obaldo with the OAG's Office. May I be heard?

23 THE COURT: Of course.

24 MS. OBALDO: Your Honor, as you know, we represent
25 the State of Texas and we would have an interest in -- we

1 have a public interest in protecting those who may be
2 directly or indirectly affected by this so we would like to
3 be a part of this discussion, as well as brainstorm some
4 ways that we could further provide notice to former
5 customers.

6 THE COURT: There's no one I would prefer to have
7 involved, so yes. I think this is an important public issue
8 for the State to worry about.

9 Folks, I haven't read the Plan. I've read what
10 they tell me about the Plan. A plan that tells people -- it
11 sounded like on average the average outstanding bill is
12 about \$1,000 right now for people, maybe \$1100 -- that tells
13 people, "You can be forgiven without any litigation of your
14 \$1100 obligation or you can join up over in a class action
15 and you might win, you might lose."

16 Those are really important things to be able to
17 tell people and they need to know both sides of that. They
18 need to know that if they don't do the release, they could
19 very well be held liable for the \$1,000 or \$1100 and they
20 need to know if they do do the release, they're not going to
21 come back in some class action and get -- and I apologize,
22 Mr. Potts, I haven't read your class action. They're not
23 going to get, for example, ETPA damages and I don't know if
24 that's in your class action or not --

25 MR. POTTS: Yes.

1 THE COURT: -- not suggesting it should or
2 shouldn't be -- because you signed a release. So you know,
3 what do you want to swap for? And we need to really be sure
4 we're telling people accurate information and know how to do
5 that.

6 The other problem that I know we have is whether
7 we're going to get additional class action lawsuits or class
8 action parties that want to join an independent class action
9 and I don't know whether we shouldn't be setting a bar date
10 for that, as well, so that this can all be considered.

11 I'm very worried about what notice we're going to
12 give to people. I do think what the Debtor is proposing is
13 unique and there will be many people that believe it is to
14 their advantage to get rid of the bill and not worry about
15 things and there are going to be many others that are angry
16 and want to pursue a lawsuit, and I don't think I should be
17 putting people into one category or the other. We need to
18 be sure that they know what their rights are.

19 And I can't imagine that we don't want your office
20 heavily involved in trying to balance those interests,
21 Ms. Obaldo.

22 MS. OBALDO: Yes, Your Honor. We intend to very
23 active in those discussions and addressing that concern.

24 THE COURT: Do you think we can be ready by Friday
25 or am I being too optimistic to think -- or do you all maybe

1 want to do just a status conference on Friday to see where
2 we are on this issue? It sounds like we won't even have
3 schedules filed yet. so we're not too worried about sending
4 out notices until we can really calculate it, but you all
5 tell me what is going to be helpful.

6 MS. SPIGEL: Your Honor, we hope to -- yes,
7 Your Honor.

8 THE COURT: Go ahead, Ms. Spigel.

9 MS. SPIGEL: We hope to be filing the Schedules
10 before Friday, but -- and I would like to set it for a
11 hearing although perhaps we can contact Your Honor's
12 Chambers if it would -- should just be converted to a status
13 conference. As I said, we just are worried about the
14 limited resources here. I hear all the concerns and I think
15 it is important. We absolutely would like to have the right
16 notice go to the customers and have them decide. This is
17 not -- we're not try to jam the customers. And even with
18 the electronic notice, that's the only way they've ever
19 gotten notice from the company, so we are trying to do
20 the -- yeah.

21 THE COURT: I don't think you're trying to jam
22 people either. I hope nothing I said implies that. No, I
23 just want to be sure that we get this done right and that
24 people know what their options in an accurate way are.

25 Why don't we do this? Unless I get a strongly-

1 worded objection from somebody, I'm going to come in Friday
2 morning at 8:00 and figure out where we're going on this
3 question. And I'm not discounting the possibility that
4 it'll be obvious by Friday morning at 8:00 what I should do,
5 but in all likelihood I think it's going to be status
6 conference of -- I want to be sure that when we give people
7 this initial notice, they understand the consequences of
8 filing a Proof of Claim, they understand the consequences of
9 what might be the future release, that of course filing the
10 Proof of Claim isn't going subject them to release albeit a
11 vote on the Plan, but telling people early so they can start
12 thinking about things may be very helpful so that they can
13 understand this and maybe not. Maybe we shouldn't do that
14 before we have a plan that's been conditionally approved,
15 but that's the kind of thing we can worry about on Friday.

16 So unless someone has a conflict, I do have
17 somebody else that wants to participate.

18 From 832-585-9829, who do we have?

19 MS. STRATER: Yes, Your Honor. This is Karen B.A.
20 Strater (phonetic). I represent Sequarty's (phonetic)
21 putative class action, as well as a few other individuals
22 and I just wanted to comment that although the customers
23 have always received notification by email, that if they're
24 no longer receiving the services from Griddy, they may not
25 pay attention to the email, so I think that a status

1 conference on Friday is probably a good idea. I'm not sure
2 that by Friday we would have a full plan on how to best
3 notify the people because they may not pay attention to an
4 email from Griddy if they are no longer receiving those
5 services and I just wanted to bring that to the Court's
6 attention. I'm very concerned about how they're going to
7 get notification.

8 THE COURT: I am, too, but I would tell you that
9 one of the big problems we have with bankruptcy -- in any
10 bankruptcy case is people get a letter and they throw it
11 away. So figuring out the best way to notify people is
12 really important and it may be that email is superior to a
13 letter and it may be that it's inferior to a letter.

14 Do you have a separate class that you're proposing
15 or are you representing a limited group?

16 MS. STRATER: Your Honor, it's part of the same
17 class.

18 THE COURT: As Mr. Potts?

19 MS. STRATER: Yes, Your Honor.

20 THE COURT: Okay. I did not know that. Thank
21 you.

22 All right. If no one is objecting then, we're
23 going to continue this motion.

24 Hand in hand with that goes the redaction motion,
25 so we might as well talk about this as well. It's almost

1 the same problem, which is if we can figure out a good way
2 to tell people what their rights are, then we may protect
3 them by redacting their address and their phone number and
4 their email. But if we can't figure out a good way to
5 communicate with them, all sides of this, not just the
6 Debtor's side, but also the here's-a-lawsuit-you-may-have
7 side, I don't want to then limit them from receiving
8 information from others that might give them important
9 information.

10 So I think the redaction motion needs to be going
11 hand-in-hand with the notice. We need to figure what is
12 effective notice and how we're going to do that so let's
13 talk about that on Friday as well.

14 So, Mr. Newcomb, we've interrupted you a lot.
15 We're going to go back to you now and we'll see you though
16 on those motions on Friday morning.

17 Where did you want to go now, Mr. Newcomb?

18 MR. NEWCOMB: Your Honor, I think if we're going
19 to push the redaction motion. as well, then I think that --
20 I'm just double-checking, but I believe that takes us to the
21 end of the Agenda. I know --

22 THE COURT: You can disagree with me, but don't
23 you think they go hand-in-hand in terms of -- redaction
24 makes more sense if people are getting full notice from all
25 sides than it does if it's going to limit their ability to

1 get notices?

2 MR. NEWCOMB: Yes, Your Honor, I agree. I just
3 wanted to note that we did serve -- I'm sorry, we did file a
4 creditor matrix last night. That's a limited creditor
5 matrix that doesn't have the former customers listed on
6 there, but we did list individual -- we did redact
7 individual address information on that creditor matrix, but
8 if that's something that we need to revisit and file an
9 amended one after we discuss the motion, we're happy to do
10 so. But I just want to say that for the Record.

11 THE COURT: So, Mr. Newcomb, look as to -- and
12 I'll listen to this argument on Friday as well, but as to
13 protecting your employees' home addresses and stuff, I got
14 it that that might be appropriate.

15 The customers I want to be sure get adequate
16 information and I want to be sure the redaction, that the
17 balance of protecting their privacy is properly weighed
18 against their need for information from appropriate parties.

19 And I really hope that the Texas Attorney
20 General's Office will focus heavily on that question for us
21 as well, Ms. Obaldo.

22 MS. OBALDO: Yes, Your Honor, we will.

23 THE COURT: Thank you.

24 MR. POTTS: Your Honor, one last issue if I may?
25 First to be able to properly give notice, we also need to

1 know about the existence of any insurance coverage that
2 might potentially cover the class action so we would ask
3 that that be -- that any and all policies be disclosed
4 immediately.

5 THE COURT: I'll let you talk to Debtor's counsel
6 about that. If we have a discovery issue, you can bring it
7 up at any point. I'm pretty good about giving people
8 hearings, but I would expect that you would be able to make
9 an informal request to Debtor's counsel and learn what you
10 need to learn.

11 MR. POTTS: Thank you, Your Honor.

12 THE COURT: Thank you.

13 Does anyone else have anything that we need to
14 deal with today?

15 (No audible response.)

16 THE COURT: All right. This is a difficult case
17 and I know that I started off giving people maybe more
18 difficulty than what they wanted, but I really am worried
19 about getting this handled properly and that worry is not a
20 reflection at all that the Debtors aren't handling it
21 properly. Debtors are proposing to do something unique and
22 really in an unprecedented situation as far as I know in
23 terms of how to approach things.

24 So my tone or words may have come across wrong and
25 for that I do extend my apologies to people. I just -- I

1 think it's really important that the Court take charge of
2 the case early when you have this kind of situation. With
3 the huge number of Texans who were adversely affected, I
4 want to be sure they know what their rights are. And I
5 really do respect the difficulty that everyone is
6 confronting in trying to deal with things.

7 I read all of the declarations. I want the
8 Debtors to know that when they were sending notices out to
9 people and saying "You should change providers," that was an
10 impressive thing to do.

11 Mr. Potts, you probably don't want to hear that,
12 but it was an impressive thing for them to do. As to
13 whether it frees from of other problems, I don't know, but
14 I'm not seeing someone here that set out to do anything
15 wrong. I may have someone here that did something wrong and
16 it's way too early for me to make that kind of
17 determination.

18 I don't know whether -- if ERCOT's pricing was
19 incorrect, if I understand the declarations, there is no
20 allegation that it was incorrect for the entire period. I
21 believe it was incorrect for the latter portion of the
22 87 hours and we would still have a problem here.

23 So we have a lot to do, we have a lot to learn and
24 I just want to thank everybody for being here and trying to
25 get the right thing done, which is what I'm hearing everyone

1 trying to do, and I'm trying to be really careful and I hope
2 you hear that, that spirit and not in the spirit of
3 criticism.

4 Thank you all. I'm going to go ahead and adjourn
5 the court until 1:30 when I have 1:30 hearings, but I will
6 see you guys at 8:00 a.m. Central Time by telephone on
7 Friday morning. Thank you.

8 (The parties thank the Court.)

9 (Proceeding concluded at 12:38 p.m.)

10 * * * * *

11 I certify that the foregoing is a correct
12 transcript to the best of my ability due to the condition of
13 the electronic sound recording of the ZOOM/telephonic
14 proceedings in the above-entitled matter.

15 /S/ MARY D. HENRY

16 CERTIFIED BY THE AMERICAN ASSOCIATION OF
17 ELECTRONIC REPORTERS AND TRANSCRIBERS, CET**337
18 JUDICIAL TRANSCRIBERS OF TEXAS, LLC
19 JTT TRANSCRIPT #63624
20 DATE FILED: MARCH 18, 2021

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